

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 5270-HDPK-1

Investigation into Least-Cost )  
Investments, Energy Efficiency, ) Hearing at  
Conservation and Management of ) Montpelier, Vermont  
Demand for Energy In Re: Hyde Park) February 16, 1995  
Electric Department's Integrated )  
Resource Plan )

Order entered: 5/15/95

PRESENT: Paul R. Peterson, Esq., Hearing Officer

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I. INTRODUCTIONA. Summary

This Proposal for Decision recommends that the Public Service Board ("Board") approve the integrated resource plan ("IRP") of the Village of Hyde Park Electric Department ("Hyde Park") pursuant to a stipulation in this Docket filed by Hyde Park and the Department of Public Service ("DPS"). Hyde Park's IRP represents a significant first step towards the development of a least-cost portfolio of supply-side and demand-side resources that will provide adequate and reliable service at a reasonable cost to Hyde Park's customers over a long-term planning horizon. The parties agree that Hyde Park's IRP meets the requirements of 30 V.S.A. § 218c and complies with the Board's Orders in Docket No. 5270 and the DPS's Twenty-Year Plan.

Hyde Park anticipates that its future electricity needs, without demand-side management ("DSM") programs, will increase by 5.6 percent for energy and 5.5 percent for peak demand by 1998. Cost-effective DSM programs are expected to reduce the growth rate of Hyde Park's electricity needs by 29 percent for energy and 42 percent for peak demand through 1998.

Over a five-year period, Hyde Park anticipates spending \$37,738 on DSM programs to acquire benefits over the life of the measures of \$56,374; net system benefits are \$18,637. Net societal benefits (including customer costs and externality and risk adjustments) are \$15,285. According to its annual report filed with the DPS and this Board, Hyde Park's total revenues for 1993 were \$915,937. DSM expenditures will average less than one percent of Hyde Park's annual revenues.

Hyde Park's IRP is the fourth VPPSA-member system IRP to complete DPS review and technical hearings.<sup>1</sup> This Proposal for Decision recommends that

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1. The Vermont Public Power Supply Authority ("VPPSA") purchases electricity and coordinates energy usage for nine municipal electric departments: Village of Enosburg Falls Water and Light Department, ("Enosburg"), Hyde Park, Town of Hardwick Electric Department ("Hardwick"), Village of Jacksonville Electric Company ("Jacksonville"), Village of Ludlow Electric Light Department ("Ludlow"), Village of Lyndonville Electric Department ("Lyndonville"), Village of Morrisville Water and Light Department ("Morrisville"), Village of Stowe Electric Department ("Stowe"), and Swanton Village, Inc., Electric

the Board create a presumption of approval for remaining VPPSA-member systems whose IRPs conform to the stipulation recommended for approval today. In particular, the load forecast methodology, the supply-side analysis, and DSM program designs are an appropriate template for other VPPSA-member first-round IRPs.

#### B. Background

Hyde Park filed its first IRP on June 17, 1991. Numerous revisions were filed to that IRP over the next several months as the DPS, Hyde Park, and VPPSA had informal discussions regarding Hyde Park's and other VPPSA-members' IRPs.

On May 6, 1992, Hyde Park filed, in essence, a new IRP. A prehearing conference was held on June 8, 1992, at which time a schedule for reviewing VPPSA-member IRPs was set. That schedule anticipated that Hyde Park's IRP would be reviewed after the IRPs for Ludlow and Lyndonville had been reviewed and approved by the Board. As noted in footnote 1, Ludlow's IRP was approved on 12/3/92 and Lyndonville's IRP was approved on 11/30/93.

On April 19, 1994, a status conference was held to determine a schedule for reviewing Hyde Park's IRP. A schedule was set that linked the review of Hyde Park's IRP to a final Board Order regarding Hardwick's IRP. On August 17, 1994, Hyde Park filed final revisions to its IRP and stated that its IRP was ready for DPS review and Board approval. On December 2, 1994, the Board issued its Order approving Hardwick's IRP in Docket No. 5270-HDWK-1.

On December 15, 1994, a status conference was held in this Docket. At that time, the parties stated that they were making progress towards a negotiated settlement and that they anticipated finalizing their agreement by February, 1995.

On January 18 and February 3, 1995, status conferences were held to monitor the parties' progress in reaching a negotiated settlement. On February 9, 1995, the parties filed a stipulation resolving all outstanding issues regarding Hyde Park's IRP.

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Department ("Swanton"). VPPSA-member systems with approved IRPs are Ludlow (12/3/92), Lyndonville (11/30/93) and Hardwick (12/2/94).

An evidentiary hearing on the stipulation was held on February 16, 1995.

## II. FINDINGS OF FACT

1. Hyde Park's load forecast estimates that energy consumption will increase from 10.16 million kWh in 1994 to 10.73 million kWh in 1998, an increase of 5.6 percent. Hyde Park IRP at 1.1.3.

2. Hyde Park's load forecast estimates that peak load demand will increase from 2.198 MW in 1994 to 2.32 MW in 1998, an increase of 5.5 percent. Id. at 1.1.1.

3. Hyde Park's load forecast is adequate for this IRP and for identifying avoided costs for the purpose of screening DSM measures and transmission and distribution ("T&D") improvements. Stip. at 2-3.

4. Hyde Park's load forecast is not sufficient for screening future supply acquisitions. Hyde Park agrees to revise the methodology it uses to develop its load forecast in its next IRP. Id. at 2-3.

5. Hyde Park estimates that cost-effective DSM programs will, by 1998, reduce its load forecast energy consumption by 1.6 percent (0.17 million kWh) and its peak load demand by 2.2 percent (0.05 MW). Hyde Park's rate of growth for electricity will be reduced by 29 percent for energy and 42 percent for peak demand. Exh. Hyde Park-1.

6. Hyde Park and the DPS disagree over the appropriate conclusions to draw from the IRP's supply resource plan. Hyde Park will address the DPS's concerns with a compliance filing due August 1, 1995. Stip. at 5-6.

7. Hyde Park will not use the IRP supply plan to support future energy capacity purchases that exceed a five-year term or represent more than one percent of Hyde Park's load. Id. at 6.

8. By April 3, 1995, Hyde Park will file a proposal for a T&D Study that includes a detailed schedule and budget. Hyde Park will begin the T&D Study on or before May 1, 1995, and shall complete the Study and file it with the Board on or before August 1, 1995. Id. at 2.

9. By December 1, 1995, Hyde Park will file a T&D Plan that details when the recommendations from the Study will be implemented. Id.

10. Hyde Park will implement cost-effective DSM programs for its residential, commercial, and industrial customers that are essentially the

same as the DSM programs in Hardwick's IRP. Tr. 2/16/95 at 17.

11. Hyde Park estimates that the DSM programs it implements pursuant to this IRP will cost Hyde Park \$37,738 and produce benefits to Hyde Park of \$56,374. Net benefits to Hyde Park will be \$18,637. Exh. Hyde Park-1.

12. Hyde Park estimates that total societal benefits (including externality benefits) from its DSM programs will be \$59,192. Total societal costs (Hyde Park and customer costs adjusted for risk) are estimated at \$43,907 which result in net societal benefits of \$15,285 and a benefit to cost ratio of 1.35. Id.

13. Hyde Park will provide documentation of the assumptions it used for measure costs and savings as part of program evaluations or by January 1, 1996, whichever is sooner. Stip. at 8.

14. In its next IRP, Hyde park will propose a comprehensive strategy for acquiring lost opportunity resources from all customer classes and will model a second set of retrofit program designs. Id.

15. In any applicable proceeding under 30 V.S.A. § 248, the issue of the load impact of DSM resources beyond those identified in this IRP may be raised. Id.

16. Hyde Park and the DPS agree that Hyde Park's IRP, as modified by the parties' stipulation, meets the requirements of 30 V.S.A. § 218c and the Board's Orders in Docket No. 5270. In addition, Hyde Park and the DPS state that the parties' filings describe a least-cost plan for meeting the electrical energy needs of Hyde Park's customers. Tr. 2/16/95 at 18, 24-25.

### III. DISCUSSION

#### A. Load Forecast

The parties agree that Hyde Park's load forecast provides final estimates of load and energy growth that are within a reasonable range of acceptability. The methodology used to generate Hyde Park's load forecast is the same methodology that VPPSA uses for its other members' IRPs. The parties further agree that Hyde Park's load forecast cannot be used to support future supply acquisitions, but that it can be used to establish avoided costs for

screening the cost-effectiveness of T&D improvements and DSM measures.<sup>2</sup> Stip. at 2-3.

The DPS maintains that VPPSA's forecasting methodology needs improvement. Specifically, the DPS wants VPPSA to utilize more refined load forecasting techniques (including econometric methods, end-use analysis, and uncertainty analysis) and not rely on simple extrapolation. In addition, the DPS wants VPPSA to take into account future changes to electrical energy efficiency, provide more extensive documentation, and conform the load forecast to the requirements of the Vermont Twenty-Year Electric Plan (1994) in future IRP load forecasts for Hyde Park. Id. at 3.

Hyde Park and VPPSA, while not endorsing all of the DPS's recommendations, agree to address these specific issues in a compliance filing due on or before August 1, 1995. Id. at 3-4.

The DPS raised very similar concerns in Docket No. 5270-HDWK-1 regarding Hardwick's VPPSA-generated load forecast. The Hearing Officer in that Docket concluded that Hardwick's load forecast was reasonable for determining avoided costs for the screening of T&D improvements and energy efficiency measures, but that it should not be a basis for any supply resource acquisitions. In a recommendation adopted by the Board, the Hearing Officer directed Hardwick to respond to the DPS's concerns in its next IRP. See, Docket No. 5270-HDWK-1, Order of 12/2/94 at 13-18.

I recommend that the Board adopt a similar approach in this Docket: Hyde Park's load forecast is adequate for this first- round IRP; it cannot be used, by itself, to support future supply resource acquisitions; it can be used to determine cost-effective T&D and DSM options; and future IRP filings must address the concerns raised by the DPS regarding load forecasts.

#### B. Transmission and Distribution

The parties agree that Hyde Park will complete a T&D Study and develop a T&D Plan by December 1, 1995. The parties acknowledge that T&D issues are a

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2. It is worth noting that, in the last five years, Hyde Park's peak load demand has decreased from 2.234 MW (1989) to 2.198 MW (1994). This relatively flat demand has allowed Hyde Park to avoid purchasing expensive peak load capacity.

critical component of an IRP. Hyde Park anticipates filing a detailed schedule and budget for a T&D Study by April 3, 1995<sup>3</sup>; begin the T&D Study by May 1, 1995; and file a completed T&D Study with the Board by August 1, 1995. Stip. at 1-2.

I recommend that the Board approve the T&D component of Hyde Park's IRP on the condition that Hyde Park fulfill its obligation to complete a T&D Study and file a T&D Plan consistent with the schedule detailed above.

C. Supply-Side Resources

The parties agree that Hyde Park will use the principles of least-cost planning in all future supply resource acquisitions. The parties further agree that Hyde Park's supply plan in this IRP will not be used to support any future energy capacity purchase that exceeds a five-year period or represents more than one percent of Hyde Park's historic peak demand.<sup>4</sup> Stip. at 6; tr. 2/16/95 at 20.

The DPS maintains that Hyde Park's supply resource plan in Hyde Park's IRP indicates an excess of supply resources of approximately 10 percent and understates the likely cost of future supply. In addition, the DPS believes that Hyde Park did not consider alternative supply options; the avoided cost calculations used to screen DSM programs are inaccurate; and the overall documentation of the plan is inadequate. Stip. at 4-5.

Hyde Park disagrees with the DPS claims, but agrees to make a compliance filing on or before August 1, 1995, to try and address the DPS's concerns. The parties state that they will use their best efforts to resolve any disagreements. Id. at 5-6.

I note that the DPS raised similar concerns regarding the supply plan that VPPSA developed for Hardwick's IRP. In that Docket, the Hearing Officer recommended, and the Board approved, a requirement that Hardwick's next IRP

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3. Hyde Park filed a detailed schedule and budget for its T&D Study on April 7, 1995.

4. Supply contracts that exceed five years or represent more than one percent of a utilities' peak demand must be reviewed under 30 V.S.A. § 248. Contracts that do not trigger review under § 248 are filed as General Order 45s and may go into effect without Board approval.



filing address the DPS's concerns. I conclude that the parties' agreement to follow a similar procedure in this Docket is adequate for this round of IRP review. Second-round VPPSA-member IRPs will need to fully respond to the DPS's concerns. See, Docket No. 5270-HDWK-1, Order of 12/2/94 at 18, 21-24, 48.

D. Demand-Side Resources

The parties agree that the DSM programs proposed in Hyde Park's IRP are virtually the same DSM programs approved by the Board in Hardwick's IRP docket. Two changes are specified in the parties' stipulation. First, in the Small Commercial and Industrial program, Hyde Park agrees to extend its incentives to cover equipment replacement measures, until such time as Hyde Park implements an alternative equipment replacement program. Second, in the Residential Direct Install program, Hyde Park agrees to install for each customer, where cost-effective, four compact fluorescent bulbs for one dollar apiece and all remaining cost-effective bulb installations at a 50 percent incentive level. Hyde Park's original program design offered all bulbs at a 50 percent incentive level. Stip. at 6-7; tr. 2/16/94 at 17-18, 25-26; Hyde Park IRP at 3.3.3, 3.3.7.

The parties also agree that Hyde Park's next IRP will include a comprehensive lost opportunity strategy for securing DSM resources from all relevant customer classes and the modeling of a second set of retrofit program designs. In addition, the parties agree that the load impacts of additional DSM resources, beyond those resources identified in this IRP, can be raised in any proceeding involving transmission improvements or new resource acquisitions pursuant to 30 V.S.A. § 248. Stip. at 8.

The societal benefits from all of Hyde Park's proposed programs are estimated at \$59,192. Societal costs are estimated to be \$43,907, producing net societal benefits of \$15,285. The benefit to cost ratio for all programs is 1.35. Findings 11, 12.

Hyde Park anticipates spending \$37,738 on its DSM programs over a five-year implementation period, with most of its expenditures in the first two years. Hyde Park's 1993 revenues were \$915,937. As a five-year average, Hyde Park's DSM expenditures will be less than one percent of Hyde Park's revenues.

Id.; tr. 2/16/95 at 15-16; Hyde Park, C&D Report (1993).

I recommend that the Board approve the DSM program designs proposed by Hyde Park, as modified by the parties' stipulation. It is worth noting that Hyde Park incorporated the program designs approved by the Board in Docket No. 5270-HDWK-1. In that Docket, the DSM program designs were the subject of considerable litigation effort with the Board adopting, in large measure, the Hearing Officer's recommendations for resolving the contested issues. By adopting those Board-approved designs, Hyde Park avoided re-litigation of those issues.

I further recommend that the Board require Hyde Park, prior to the approval of its next IRP, to implement additional cost-effective DSM programs that are identified by VPPSA.

#### E. Least-Cost Plan

The parties state that Hyde Park's IRP is a least-cost plan pursuant to 30 V.S.A. § 218c and Board Orders in Docket No. 5270. Although not a perfect plan, the DPS believes that Hyde Park's IRP is "a very constructive step" towards meeting the requirements of § 218c and the Board's Orders. Tr. 2/16/95 at 18, 24-25.

I agree with the parties' assessment. Hyde park is a small utility with slightly more than one thousand customers, a peak load of under 2.2 MW, and an annual energy consumption of about 10 million kWh. Hyde Park has experienced very little growth over the last five years and does not anticipate any large supply resource acquisitions in the near future. Hyde Park has committed to a T&D study to identify cost-effective improvements and it has agreed to implement comprehensive demand-side resource programs consistent with those approved in previous Board Orders. Therefore, I conclude that Hyde Park's IRP, as modified by the parties' stipulation, is a least-cost plan within the meaning of Vermont law and I recommend that the Board approve it as an adequate, first-round effort by the Village of Hyde Park Electric Department.

#### F. Annual Reports and Next IRP

I recommend that the Board require Hyde Park to file an annual report on its DSM activities. That report should be consistent with the format approved by the Board's Order of 12/3/92 in Docket Nos. 5270-GMP-3, et al., as modified

through subsequent workshops on July 27, 1993, and July 28, 1994. The report should be filed on March 1 of each year.

Based on the Board's Order of 3/13/91 in Docket No. 5270 (Phase V), Hyde Park's first IRP was scheduled to be filed on June 17, 1991. In that Order, the Board determined that IRPs should be filed every three years. If the Board approves Hyde Park's IRP in this Docket, I recommend that Hyde Park file its next IRP on or before January 15, 1997. January 15, 1997 will be approximately two and one-half years since Hyde Park filed its revised IRP of August 17, 1994. Hyde Park anticipates that most of its current DSM efforts will be completed by 1996. During 1996, Hyde Park can model a second generation of DSM programs while it develops its next IRP.<sup>5</sup> Waiting until August 17, 1997 (three years) for Hyde Park's next IRP may result in the creation of significant lost opportunities.

G. Other VPPSA-Member IRP Reviews

An ongoing issue in this Docket has been what impact the resolution of this Docket will have on the review and approval of other VPPSA-member IRPs. At a consolidated prehearing conference in June, 1992, the VPPSA-member utilities and the DPS agreed that Lyndonville and Ludlow would have their IRPs reviewed in an attempt to resolve issues common to all VPPSA-member utilities.<sup>6</sup> Docket No. 5270-HDPK-1, et al, Order of 6/25/92.

Ludlow's IRP was approved by the Board on December 3, 1993. Lyndonville's IRP was approved by the Board on November 30, 1993.

At a status conference in May, 1994, the VPPSA-member utilities and the DPS agreed upon a schedule for review of the remaining first-round IRPs that was linked to the Board's resolution of contested issues in Hardwick's IRP

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5. As noted at the hearing on the stipulation, there is nothing to prevent Hyde Park from acquiring additional cost-effective DSM resources at any time. Tr. 2/16/95 at 15-17. In fact, Hyde Park has a legal obligation to acquire additional DSM resources regardless of the pending process for approval of its IRP. 30 V.S.A. § 218c(c).

6. At that time, the VPPSA-member utilities included Hyde Park, Jacksonville, Ludlow, Lyndonville, Morrisville, Stowe, and Swanton. Since June, 1992, Hardwick and Enosburg have become members of VPPSA.

Docket. A final Board Order in that Docket was issued in December, 1994. Docket No. 5270-HDPK-1, Order of 5/13/94; Docket No. 5270-HDWK-1, Order of 12/2/94.

At a status conference in this Docket, the DPS stated that if a stipulation could be reached with Hyde Park, that stipulation, along with the Board's final Order in Hardwick's IRP docket, could establish a framework for resolving other VPPSA-members' first-round IRPs. Docket No. 5270-HDPK-1, Order of 12/20/94.

At a status conference in January 1995, I reiterated my concern that a mechanism was needed for accelerating and streamlining the review of remaining VPPSA-member first-round IRPs. Docket No. 5270-HDPK-1, Order of 1/23/95.

At the technical hearing in February, 1995, I specifically asked the parties whether the stipulation in this Docket, in combination with the Board's resolution of issues in Hardwick's IRP Docket could serve as a template for other VPPSA-member IRP reviews. All parties responded affirmatively. Tr. 2/16/94 at 22, 26-27, 34-35, 37.

The DPS stated that other VPPSA-member IRPs still needed to be reviewed, and the DPS was not waiving any rights to recommend changes to DSM programs that were either non-cost-effective or could be delivered in more cost-effective ways. In particular, the DPS would like to see improvements in program designs for residential new construction programs. The DPS also states that some of the DPS staff that reviews IRPs is largely unavailable until April 1, 1995, due to other work assignments. The DPS notes that methodological issues related to T&D, load forecasting, and supply-side scenarios are virtually identical for all VPPSA-member IRPs. Tr. 2/16/95 at 29-31, 37.

It will soon be three years since the status conference in June 1992 when all parties to the VPPSA-member IRP dockets recognized the benefits of building upon the results of each IRP review process to reduce the burdens in

subsequent IRP reviews.<sup>7</sup> Three years is the timeframe that the Board anticipated between each iteration of a utility's IRP. In light of the significant delays that have already occurred and in consideration of the parties' comments at the technical hearing and status conferences in this Docket, I make the following recommendation to the Board.

First, if VPPSA-member utilities' revised first-round IRPs are consistent with the Board's Order in Hardwick's IRP Docket and, second, if a stipulation similar to the one in this Docket is offered to the DPS, then the filed IRP, with the proposed stipulation, shall be considered appropriate for Board approval. The DPS shall have twenty days from the filing of the revised IRP and proposed stipulation to file comments with the Board stating reasons why it would not be appropriate for the Board to approve the IRP.

After reviewing the DPS's comments, the Board will determine if a technical hearing is needed to resolve any outstanding disputes. Whether or not a technical hearing occurs, a proposal for decision will be circulated and the parties, unless they waive their right to review the proposal, will have an opportunity to make additional comments.

I recognize that my recommendation requires the DPS to demonstrate why the IRP is deficient, rather than requiring the utility to demonstrate why the IRP is sufficient. However, given the general consistency between VPPSA-member IRPs and the substantial litigation of most issues in other VPPSA-member IRP dockets, I conclude that such a shift in burdens is appropriate and necessary to streamline the review process for this first round of IRP filings.

Second-round IRP filings may also be able to benefit from sequential review. However, that issue will be determined, in part, by the results of the DPS's review of Ludlow and Lyndonville's second-round IRPs.

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7. In Docket No. 5270 (Phase V), Order of 3/13/91 at 7-8, the Hearing Officer noted that the transfer of programs from one utility to another will "avoid the need to litigate many aspects of program design, technology, and performance measures".

IV. CONCLUSIONS

In summary, I recommend that the Board approve Hyde Park's IRP, as modified by the parties' stipulation. Hyde Park's next IRP should be filed on or before January 15, 1997. The Board should require Hyde Park to file annual DSM reports on March 1 of each year, beginning on March 1, 1996. In the interim period before Hyde Park's next IRP is approved, the Board should require Hyde Park to implement all cost-effective DSM measures that are identified by VPPSA.

I recommend that the Board establish a review process for the remaining VPPSA-member IRPs that builds upon past litigation and review and is consistent with the approach described above.

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 21st day of  
April, 1995.

s/Paul R. Peterson  
Paul R. Peterson, Esq.  
Hearing Officer

V. BOARD DISCUSSIONA. Summary

Integrated resource planning is essential to the provision of utility energy services in Vermont. It provides great benefits for ratepayers; it is required by 30 V.S.A. § 218c; and it is mandated on a regular basis by Docket No. 5270, Order of 4/16/90. The fundamental issue before us is how to adjust the review process for utility IRPs to allow customers and ratepayers to receive the benefits of least-cost planning.<sup>8</sup> Our Orders of 4/16/90 in Docket No. 5270 and 3/13/91 in Docket No. 5270-Phase V established a requirement that utilities file IRPs every three years. The obligation imposed on utilities to routinely file IRPs imposes a complementary obligation on the Board and Department to review, evaluate, and judge them in a prompt and predictable manner. Based on the evidence in this and other IRP dockets, it is clear that the pace of review is falling short of that obligation. Delays in the filing and review of IRPs will only delay the time that ratepayers begin to receive the benefits of least-cost plans.

The Proposal for Decision ("PFD") recommends that we adopt a review process for the remaining VPPSA-member first-round IRPs that will lead to an accelerated review and approval process. On this point, the DPS raises strong objections and requests that we reject or modify the Hearing Officer's recommendations. For reasons discussed below, we adopt, in large measure, the recommendations in the PFD regarding VPPSA-member first-round IRPs. We conclude that issue preclusion is an appropriate mechanism for remaining VPPSA-member first-round IRPs, although we modify some of the Hearing Officer's specific recommendations.

B. Background

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8. The parties to this Docket, and the Hearing Officer, recommend that we approve Hyde Park's IRP as modified by the parties' stipulation. Hyde Park's IRP is the fourth VPPSA-member IRP that has gone through a rigorous DPS review process and been recommended by the Hearing Officer for approval. Four other VPPSA-members have filed first-round IRPs that are waiting for review. A fifth VPPSA-member anticipates filing a revised first-round IRP by August, 1995.

On April 13, 1995, VPPSA filed a letter stating that it supported the Hearing Officer's Proposal for Decision ("PFD") and that it did not have any substantive comments to make.

On April 14, 1995, the DPS filed a letter requesting oral argument. The DPS filed comments on the PFD on April 20, 1995, pursuant to an extension of time granted by the Hearing Officer. The DPS supports the Hearing Officer's recommendation to approve Hyde Park's IRP pursuant to the stipulation filed in this Docket. The DPS takes exception to the Hearing Officer's recommendations regarding review of other VPPSA-member IRPs.

Oral argument was held on May 1, 1995. Based on the parties' comments at oral argument and our independent review of the record in this Docket, we make the following modifications to the Hearing Officer's recommendations regarding review of VPPSA-member first-round IRPs.

#### C. IRP Review

The DPS maintains that precluding issues or shifting burdens will interfere with the DPS's ability to negotiate better IRPs from VPPSA-members, as well as other utilities. We do not intend to limit the DPS's ability to negotiate for improvements to utility IRPs. We are not shifting the burden of proof regarding the appropriateness of specific elements of an IRP. Nonetheless, the IRP review process itself must be fair to all participants. The overall fairness of the process is improved when reviews are completed in a timely and predictable manner.

Our Orders of 4/16/90 in Docket No. 5270 and 3/13/91 in Docket No. 5270 Phase V established a requirement that Vermont utilities make IRP filings every three years. Vermont statutes require utilities to file IRPs with the DPS and the Board. After notice and hearing, the Board may approve a utility's IRP if it meets the criteria of 30 V.S.A. § 218c. A review and approval process that takes longer than three years is unacceptable on an ongoing basis. Rate cases are typically resolved in six to nine months after a utility's initial filing. We believe a similar time frame is appropriate for IRP reviews.

Since 1990, the regulatory community in Vermont (the utilities, the DPS, the Board, and several intervenors) has learned a great deal regarding



integrated resource planning. During that time we have encouraged utilities to be innovative in their approaches to IRP issues. We have approved DSM programs and IRP filings that recognize differences among Vermont's 21 electric utilities, thereby allowing those utilities flexibility in adapting IRP principles to their systems. Based on several years of DSM program implementation and IRP reviews, judgments can be made regarding the best approaches for developing least-cost plans. It is time, now, to apply the results of those years of learning to make integrated resource planning a regular and normal part of utility activities in Vermont.

Utilities should review their IRPs on a regular basis and file updated summaries of their resource acquisition strategies every three years. The DPS should begin reviewing a utility's updated IRP promptly after it is filed and be prepared to comment at a prehearing conference on the scope of investigation needed to review the IRP. Within nine months of filing its IRP, barring unusual complexities or an agreement to delay review, a utility should know whether or not its IRP satisfies 30 V.S.A. § 218c and any relevant Board Orders.

#### D. Issue Preclusion

The DPS states that the recommendations in the PFD go beyond the scope of issues litigated in this Docket. The DPS maintains that there are no findings or record evidence to support conclusions regarding any utility IRPs other than Hyde Park's IRP. Tr. 5/1/95 at 4-7.

VPPSA maintains that the recommendations in the PFD preclude the DPS from raising previously litigated issues in subsequent VPPSA-member IRP dockets. VPPSA states that the doctrine of collateral estoppel can be applied by administrative agencies to avoid re-litigation of issues. In support of its argument, VPPSA cites Trepanier v. Getting Organized, Inc., 155 Vt. 259 (1990). Tr. 5/1/95 at 19-21.

In Trepanier, the Court determined that issue preclusion could be found when five criteria are met:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits;
- (3) the issue is the same as the one raised in the later action;
- (4) there was a full and fair

opportunity to litigate the issue in the earlier action;  
and (5) applying preclusion in the later action is fair.

Id. at 265. VPPSA maintains that all five criteria are satisfied by the proceedings in this Docket and the Board's previous Order of 12/2/94 in the Hardwick IRP Docket.<sup>9</sup> Moreover, VPPSA states that the Board could find issue preclusion in future VPPSA-member IRP dockets on its own without making any decision regarding the Hearing Officer's recommendations in this Docket. Tr. 5/1/95 at 19-22.

Applying the Trepanier criteria to the facts in the record, we make the following findings. In previous VPPSA-member IRP dockets and in this Docket, the DPS was a party. The IRPs in those dockets and in this Docket have been approved by this Board. The issues litigated and stipulated to in approved VPPSA-member first-round IRPs are very similar to the issues likely to be in dispute in VPPSA-member IRPs waiting for approval. The issues resolved in approved VPPSA-member IRPs were either fully-litigated or the opportunity for full litigation was waived by the parties through a stipulation. Finally, on the issue of fairness, the PFD recommends that the DPS should have an explicit opportunity in future VPPSA-member IRP proceedings to demonstrate that it would be unfair to preclude litigation of any particular issues.

We conclude that the Hearing Officer's recommendations satisfy the standard cited in Trepanier. Administrative efficiency requires that the Board have the authority to preclude the DPS from re-litigating the same issues in a series of IRP proceedings. Nonetheless, we want to emphasize the limitations of our decision today as it applies to utility IRPs.

#### E. Application of Issue Preclusion

First, our ruling today is limited, at this time, to first-round VPPSA-member IRPs. Second-round VPPSA-member IRPs will be subject to full review on all aspects of load forecasting, base-case supply scenarios, transmission and

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9. VPPSA states that the holding in Trepanier applies to administrative agencies based on Delozier v. State, 160 Vt. 426 (1993). Issue preclusion applies: "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate." Id. at 429.

distribution issues, and DSM programs. If issue preclusion is appropriate for second-round VPPSA-member IRPs, that determination will be made in the context of those second-round IRP proceedings.

Second, only first-round VPPSA-member IRPs that satisfy both conditions recommended by the Hearing Officer are eligible for issue preclusion. The IRP must be essentially the same as the Hardwick IRP approved by the Board and the utility must offer to stipulate to all the material conditions that Hyde Park stipulated to in this Docket.

Third, even first-round VPPSA-member IRPs will be subject to DPS review regarding the appropriateness of issue preclusion. The DPS can assert that a particular VPPSA-member IRP differs in material respects from those previously approved by the Board. The DPS can assert that circumstances have changed to an extent that previously litigated issues need to be re-visited. And, the DPS can assert that new information makes it appropriate to re-visit issues resolved in previous Board Orders. If the DPS makes such claims, a hearing will be held to determine the extent, if at all, that issue preclusion applies.

Fourth, the DPS shall have thirty days, rather than the twenty days recommended by the Hearing Officer, to file its comments on whether any issues need to be litigated. The DPS may request a hearing to determine what issues will be litigated. Whether or not a hearing on issue preclusion is necessary, a hearing on the IRP itself will be held pursuant to 30 V.S.A. § 218c.

#### F. Conclusion

The Hearing Officer's recommendations in this Docket, in our judgment, are likely to improve the IRP review process in a manner that will benefit all parties. We do not endorse an automatic application of collateral estoppel to every issue in one IRP docket that is similar to an issue raised in a previous IRP docket. However, using the guidelines established in Trepanier and with special attention to our concern regarding overall fairness, issue preclusion is an appropriate and useful concept to avoid repetitive litigation of

previously resolved issues.<sup>10</sup>

We adopt the Hearing Officer's recommendations, subject to our comments above, regarding the review of VPPSA-member first-round IRPs. Subsequent to a VPPSA-member utility filing a first-round IRP that conforms to the conditions outlined above, the DPS shall have thirty days to file comments identifying issues that are not precluded by our previous Orders.

We approve Hyde Park's IRP pursuant to the parties' stipulation.<sup>11</sup> We adopt the milestones negotiated in that stipulation and specified in our Order, below.

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VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings, Conclusions, and recommendations of the Hearing Officer are adopted as modified herein.

2. Hyde Park's IRP is approved, as modified by the parties' stipulation.

3. Hyde Park shall complete a T&D study and file it with the Board by August 1, 1995.

4. Hyde Park shall file a T&D plan and schedule for implementing the recommendations of the T&D study by December 1, 1995.

5. Hyde Park shall be prepared to demonstrate the use of least-cost integrated resource planning principles in all future supply resource acquisitions. Hyde Park's supply plan shall not be used to support any future energy capacity purchase that exceeds a five-year period or represents more than one percent of Hyde Park's historic peak demand.

6. Hyde Park shall file an annual DSM report on March first of each year, beginning on March 1, 1996.

7. Hyde Park shall file its next IRP on January 15, 1997, and file future IRPs on a three-year cycle following that date.

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10. We note that another route to the same result has already been tried. This was to set firm timelines for responses to filed IRPs. The record demonstrates that this approach has not been successful to date.

11. We modify the requirement in the PFD that Hyde Park "implement all cost-effective DSM measures that are identified by VPPSA" [emphasis added] by deleting the underlined section.

8. In the interim period, before its next IRP is approved, Hyde Park shall implement all cost-effective DSM measures.

9. Hyde Park's next IRP shall include a revised methodology for determining its load forecast, consist with the terms of the parties' stipulation.

10. Hyde Park's next IRP shall include a revised methodology for determining its supply plan, consistent with the terms of the parties' stipulation.

11. Hyde Parks' next IRP shall include a strategy for acquiring lost opportunity resources form all customer classes and it will model a second set of DSM retrofit programs.

DATED at Montpelier, Vermont, this 15th day of  
May, 1995.

<u>s/Richard H. Cowart</u>	)	PUBLIC SERVICE
	)	
<u>s/Suzanne D. Rude</u>	)	BOARD
	)	
<u>s/Leonard U. Wilson</u>	)	OF VERMONT

OFFICE OF THE CLERK

FILED: May 15, 1995

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*